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Attorney for Plaintiff  
Francisca Moralez

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

FRANCISCA MORALES,

Plaintiff,

vs.

BERMAL ASMIN, INC. dba NORTH  
BEACH GYROS; JACK LEE FONG,  
Trustee of the JACK LEE FONG AND  
DOROTHY DER FONG REVOCABLE  
FAMILY TRUST OF 6/28/91; DOROTHY  
DER FONG, Trustee of the JACK LEE  
FONG AND DOROTHY DER FONG  
REVOCABLE FAMILY TRUST OF  
6/28/91;

Defendants.

) No.

) **COMPLAINT ASSERTING DENIAL OF**  
) **RIGHT OF ACCESS UNDER THE**  
) **AMERICANS WITH DISABILITIES ACT**  
) **FOR INJUNCTIVE RELIEF, DAMAGES,**  
) **ATTORNEYS' FEES AND COSTS (ADA)**

**I. SUMMARY**

1. This is a civil rights action by plaintiff FRANCISCA MORALES ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

North Beach Gyros  
701 Union Street  
San Francisco, CA 94133  
(hereafter "the Facility")



1           10. Plaintiff lives approximately 50 miles from the Facility, and travels to the area  
2 where the Facility is located regularly. Plaintiff visited the Facility on or about July 8, 2016 to  
3 have lunch. During her visit to the Facility, Plaintiff encountered the following barriers (both  
4 physical and intangible) that interfered with, if not outright denied, Plaintiff's ability to use and  
5 enjoy the goods, services, privileges and accommodations offered at the Facility:

- 6           a) The route of travel to the restroom was obstructed by stacked high chairs  
7 which were stored there, reducing the clear width of the route and  
8 making it difficult for Plaintiff to enter and exit the restroom.
- 9           b) The required maneuvering clearances at the restroom entrance were  
10 obstructed by a metal cooler, which the door bumped into when Plaintiff  
11 tried to open it. This made it difficult for Plaintiff to open the door and  
12 maneuver her wheelchair inside.
- 13           c) The toilet seat cover in the restroom was located high on the wall,  
14 behind the toilet, making it impossible for Plaintiff to reach the seat  
15 covers.
- 16           d) The paper towel dispenser in the restroom was positioned too high on  
17 the wall, requiring Plaintiff to stretch up to reach the paper towels,  
18 which was difficult.
- 19           e) The mirror on the wall in the restroom was positioned too high for  
20 Plaintiff to see her reflection.

21           11. The barriers identified in paragraph 10 herein are only those that Plaintiff  
22 personally encountered. Plaintiff is presently unaware of other barriers which may in fact exist  
23 at the Facility and relate to her disabilities. Plaintiff will seek to amend this Complaint once  
24 such additional barriers are identified as it is Plaintiff's intention to have all barriers which  
25 exist at the Facility and relate to her disabilities removed to afford her full and equal access.

26           12. Plaintiff was, and continues to be, deterred from visiting the Facility because  
27 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and  
28 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.

1 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility  
2 once the barriers are removed.

3 13. Defendants knew, or should have known, that these elements and areas of the  
4 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to  
5 the physically disabled. Moreover, Defendants have the financial resources to remove these  
6 barriers from the Facility (without much difficulty or expense), and make the Facility  
7 accessible to the physically disabled. To date, however, Defendants refuse to either remove  
8 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

9 14. At all relevant times, Defendants have possessed and enjoyed sufficient control  
10 and authority to modify the Facility to remove impediments to wheelchair access and to  
11 comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for  
12 Accessible Design. Defendants have not removed such impediments and have not modified the  
13 Facility to conform to accessibility standards. Defendants have intentionally maintained the  
14 Facility in its current condition and have intentionally refrained from altering the Facility so  
15 that it complies with the accessibility standards.

16 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is  
17 so obvious as to establish Defendants' discriminatory intent. On information and belief,  
18 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere  
19 to relevant building standards; disregard for the building plans and permits issued for the  
20 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at the  
21 Facility; decision not to remove barriers from the Facility; and allowance that Defendants'  
22 property continues to exist in its non-compliant state. Plaintiff further alleges, on information  
23 and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the  
24 Facility are not isolated or temporary interruptions in access due to maintenance or repairs.

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**VI. FIRST CLAIM**

**Americans with Disabilities Act of 1990**

Denial of “Full and Equal” Enjoyment and Use

16. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

17. Title III of the ADA holds as a “general rule” that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

18. Defendants discriminated against Plaintiff by denying Plaintiff “full and equal enjoyment” and use of the goods, services, facilities, privileges and accommodations of the Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

19. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

21. Here, Plaintiff alleges that Defendants can easily remove the architectural barriers at the Facility without much difficulty or expense, and that Defendants violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

22. In the alternative, if it was not “readily achievable” for Defendants to remove the Facility’s barriers, then Defendants violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

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Failure to Design and Construct an Accessible Facility

23. Plaintiff alleges on information and belief that the Facility was designed and constructed (or both) after January 26, 1993 – independently triggering access requirements under Title III of the ADA.

24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren't readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, Defendants violated the ADA by designing and constructing (or both) the Facility in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.<sup>1</sup>

Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facility was modified after January 26, 1993, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

28. Here, Defendants altered the Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public – including Plaintiff – to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

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<sup>1</sup> Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.







1           3.     Attorneys' fees, litigation expenses, and costs of suit.<sup>2</sup>

2           4.     Interest at the legal rate from the date of the filing of this action.

3           5.     For such other and further relief as the Court deems proper.

4           Dated: September 1, 2016

MOORE LAW FIRM, P.C.

6                     /s/ Tanya E. Moore

7                     Tanya E. Moore

8                     Attorney for Plaintiff

Francisca Moralez

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<sup>2</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

## VERIFICATION

I, FRANCISCA MORALEZ, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: September 1, 2016

/s/ Francisca Morales

Francisca Morales

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore

Tanya E. Moore, Attorney for  
Plaintiff, Francisca Morales